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Justices Give CIA Sweeping Secrecy Powers

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WASHINGTON—The Supreme Court ruled 7 to 2 Tuesday that the Central Intelligence Agency has sweeping authority to maintain the secrecy of its far-ranging sources of intelligence data.

The court said that, even when disclosure would not affect national security, the CIA may reject requests under the Freedom of Information Act for the names of scientists, researchers and others who provide intelligence or for the titles of the books, journals and other documents the agency analyzes.

Congress' Intent Cited

"Congress intended to give the director of central intelligence broad power to protect the secrecy and integrity of the intelligence process," Chief Justice Warren E. Burger wrote for the court. "The reasons are too obvious to call for enlarged discussion; without such protections, the agency would be virtually impotent."

The justices overturned a federal appeals court ruling that said the CIA could withhold the identities of only those sources who provided information that could not be obtained without guaranteeing confidentiality. They said that the forced disclosure of any intelligence source could have a "devastating impact" on the agency.

Dissent by Marshall

Two justices, although agreeing in a concurring opinion that the appellate ruling had been too restrictive, argued that the Supreme Court had gone too far.

Justice Thurgood Marshall, joined by Justice William J. Brennan Jr., said that the justices' broad grant of authority to the CIA will "mangle, seriously," congressional efforts to balance the public's interest in obtaining information with the government's need for secrecy.

The decision was also denounced by a lawyer representing a group that had sought the names of private researchers and institutions involved in a controversial CIA drug experiment begun in the 1950s.

"This comes close to being a complete exemption of the CIA from the Freedom of Information Act," said Paul Alan Levy of the Public Citizen Litigation Group of Washington. "It is a severe setback for the public's right to learn about abuses by national security agencies."

Levy said that the ruling would enable the CIA and, perhaps, other intelligence-gathering agencies not only to refuse to disclose sources of information but to "hide the details of almost any program that it would prefer the public not know about—so long as it claims (that) disclosure of the information might lead to disclosure of the persons who provided it."

The ruling was issued in a case (CIA vs. Sims, 83-1075) involving an attempt by the Ralph Nader Public Citizen Health Research Group to obtain the names of 185 college professors and other researchers and 80 institutions that participated in a CIA project involving mind-altering drugs. The government said that the program was instituted to counteract Soviet and Chinese advances in brainwashing and interrogation techniques.

In some aspects of the project, researchers surreptitiously administered drugs to unwitting subjects—a practice the government now forbids. The Nader organization said that it wanted to get more information to see whether researchers fully knew what the project involved and whether persons who were harmed by it had grounds for a lawsuit.

The agency provided the names of 59 institutions that consented to disclosure, but it refused to release the names of the researchers or the remainder of the institutions. The dispute went to court in 1978.

The Freedom of Information Act calls for broad disclosure of government records. But Congress has also provided several exceptions to allow officials to keep some information secret. One such exception protects classified national defense and foreign policy information. The CIA relied on another, which gives the agency's director the responsibility for "protecting intelligence sources and methods from unauthorized disclosure."

The court, in its ruling Tuesday, concluded that the CIA director had free rein to define the "intelligence sources" that the agency needs to protect. The justices reviewed the legislative history of the agency's creation in 1947 and its congressional mandate to gather and evaluate intelligence from sources ranging from businessmen who travel abroad to technical and scientific reports.

'Close Up Like Clam'

If potentially valuable intelligence sources think that the agency may not be able to guarantee confidentiality, they may refuse to provide information, the court noted. "Even a small chance that some court will order disclosure of a source's identity could well impair intelligence gathering and cause sources to 'close up like a clam,'" Burger wrote.

In another action Tuesday, the justices on an 8-0 vote struck down a post-Reconstruction provision of the Alabama Constitution that denied the right to vote to persons convicted of misdemeanors involving "moral turpitude"—a term the state defined as an act "immoral in itself."

The court, in an opinion by Justice William H. Rehnquist, concluded that the 84-year-old law had been enacted with the aim of preventing blacks from voting—and that its impact was being felt even today.

Rehnquist cited testimony in the case indicating that in some Alabama counties blacks were nearly twice as likely as whites to be barred from voting on the ground that they had committed such misdemeanors.

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Felons Barred From Voting

Although many state constitutions deny convicted felons the right to vote, few still bar persons convicted of misdemeanors—minor crimes ordinarily punishable by fines or jail terms of less than a year. In California, only convicted felons who are in prison or on parole are forbidden to vote.

The Alabama law effectively prevented persons from voting if they had been convicted of such offenses as petty larceny or passing bad checks. But, under its peculiar wording, it did not bar persons convicted of second-degree manslaughter or of mailing pornography.

Justice Lewis F. Powell Jr., who missed oral argument in the case (Hunter vs. Underwood, 84-76) while recovering from surgery, did not participate.